Sorrento Coats, Inc. *and* ILGWU-Employers Vacation, Health and Welfare Fund *and* Southwest District Council, Union of Needletrades, Industrial & Textile Employees (Unite), AFL–CIO, CLC. Cases 31–CA–23318, 31–CA–23541, 31–CA–23562, 31–CA–23693, and 31–CA–23694

May 24, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Upon a charge filed by the ILGWU-Employers Vacation, Health and Welfare Fund (Fund) on April 18, 1998, and charges filed by the Union on September 11 and October 2, 1998, and January 22, 1999, and an amended charge filed on March 5, 1999, the General Counsel of the National Labor Relations Board issued a complaint on March 17, 1999, against Sorrento Coats, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On April 14, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On April 16, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 2, 1999, notified the Respondent that unless an answer were received by April 11, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in San Bernardino, California, has been engaged in the business of sewing women's coats and blazers. Within the 12 months preceding issuance of the complaint, the Respondent purchased and received goods and services valued in excess of $50,000 from other enterprises located within the State of California, each of which other enterprises had received these goods in substantially the same form directly from points located outside the State of California. Further, within the 12 months prior to the issuance of the complaint, the Respondent derived gross revenues in excess of $500,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> INCLUDED: All production and maintenance employees, present and future, including, but not necessarily limited to, workers employed as helpers, operators, pressers, sample makers, finishers, drapers, embroiderers, pleaters, shipping and receiving department employees, mechanics, maintenance employees, and general non-supervisory floor help.
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> EXCLUDED: Owners and partners, managers and engineers, and other supervisors who have the actual right to hire and fire, but who do not handle production work as part of their regular work or any other work belonging to the bargaining unit, watchmen and guards.

In about November 1990, the Respondent and the International Ladies Garment Workers Union (ILGWU) entered into a collective-bargaining agreement, which designated the ILGWU as the designated collective-bargaining representative of the unit described above, and the ILGWU was recognized as such by the Respondent. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from November 1, 1993, until October 31, 1996.

In July 1995, the ILGWU merged with the Amalgamated Clothing and Textile Workers Union, and consequently formed the Union of Needletrades, Industrial & Textile Employees (UNITE), AFL–CIO, CLC (the Union).

Since July 1995, the Union has been the exclusive collective-bargaining representative of the unit and, by virtue of Section 9(a) of the Act, has been and is now the

exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The Respondent's recognition of the Union as the exclusive collective-bargaining representative of the unit under Section 9(a) of the Act has been embodied in the Respondent's November 1, 1993 to October 31, 1996 collective-bargaining agreement with the Union and in various extensions, including extensions executed by the Respondent on about November 4, 1996, February 14, 1997, and November 11, 1998.

On about February 24, 1997, the Respondent agreed to extend its November 1, 1993 to October 31, 1996 collective-bargaining agreement with the Union for 1 year. On about November 11, 1998, the Respondent retroactively, pursuant to its obligations under a settlement stipulation executed by it in Case 31–CA–22699, et al. and under the terms of a Board order in those cases, agreed in writing to extend its current collective-bargaining agreement with the Union through February 28, 1998.

At no time has the Respondent attempted to terminate any collective-bargaining agreement with the Union, pursuant to article 36 of the agreement, or any other contractual provision or term, or in any other manner.

On about February 28, 1998, pursuant to its terms, the Respondent's collective-bargaining agreement with the Union was automatically renewed for another year, through February 28, 1999. Commencing in and before April 1998, and continuing to date, the Union has requested the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive collective-bargaining representative of the Respondent's employees in the unit.

On several dates in about July 1998, the Union orally asked the Respondent to supply it with the names, addresses, telephone numbers, and dates of hire of all unit employees. The Union repeated this request by letters on about August 12 and 13, 1998.

Commencing in about July 1998, and continuing until about October 1, 1998, the Respondent failed and refused to supply the Union with the names, addresses, and dates of hire of certain unit employees. Commencing in about July 1998, and continuing to date, the Respondent has failed and refused to supply the Union with the telephone numbers of any unit employees.

Since about July 1998, the Respondent has failed and refused to supply the Union with the names, addresses, telephone numbers, and dates of hire of about eight unit employees.

About the first half of April 1998, the Union orally requested that the Respondent provide it with payroll records and other data necessary to determine if the Respondent had lowered piece rates paid to unit employees and to determine whether the Respondent had set piece rates to achieve the yields required by article 24 of the Respondent's collective-bargaining agreement with the Union. The Union repeated this request, by letter, on about September 1, 1998.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit employees, and are mandatory subjects for the purposes of collective bargaining. Since about the first half of April 1998, the Respondent has failed and refused to supply the Union with the payroll records and other data described above. This information requested by the Union is relevant and necessary to the collective-bargaining process between the Union and the Respondent, and to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

Beginning on about May 28, 1998, and on various dates thereafter in 1998, including on about May 28, June 18, September 23, and October 23, 1998, the Respondent:

(1) Changed the established practice by which the Union had adequate and meaningful access to the Respondent's facility and to the unit employees so that the Union could perform its function as the exclusive collective-bargaining representative of unit employees.

(2) On about each of the aforementioned dates, denied the Union adequate and meaningful access to the Respondent's facility and to the unit.

The Respondent engaged in the conduct set forth immediately above without prior notice to the Union and without affording the Union an opportunity to bargain with it about this conduct.

Commencing in about March 1997, and continuing to date, the Respondent has failed and refused to make contributions to the Fund on behalf of the unit employees, which contributions the Respondent was required to make under the terms of its collective-bargaining agreement with the Union. In addition, since about March 1998, the Respondent has failed and refused to permit the Fund to conduct an audit regarding the unit, which audit the Respondent was required to permit under the terms of its collective-bargaining agreement with the Union.

Since on about September 16, 1998, the Respondent has insisted that the Union agree to settle and withdraw pending unfair labor practice charges against the Respondent, as a condition of making its contractually required contributions to the Fund on behalf of the unit and as a condition of its allowing the Fund to audit its records regarding its payments to the Fund on behalf of the unit. This condition imposed by the Respondent is not a mandatory subject for the purpose of collective bargaining.

Since about September 16, 1998, the Respondent has failed and refused to acknowledge or abide by the terms of its collective-bargaining agreement with the Union during the agreement's automatic renewal period from February 28, 1998, through February 28, 1999.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the Respondent's employees in the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to recognize and bargain with the Union as the exclusive representative of the unit employees, and to comply with the terms of the parties' collective-bargaining agreement that automatically renewed for the 1-year period ending on February 28, 1999. We also shall order the Respondent to supply the Union with unit employees' names, addresses, telephone numbers, and dates of hire, and to furnish the Union with requested payroll records and certain other data relating to piece rates.

Further, we shall order the Respondent to restore the established practice by which the Union had adequate and meaningful access to the Respondent's facility and to the unit employees. Pursuant to that practice, the Respondent shall provide the Union access to its facility and the unit employees.

In addition, we shall order the Respondent to honor the terms of the collective-bargaining agreement, to make contractually required contributions to the Fund on behalf of the unit employees, and to permit the Fund to conduct an audit regarding the unit. We also shall order the Respondent to make its unit employees whole by making all contractually required contributions to the Fund that it failed to make since about March 1997, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to make such required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), and shall make them whole for any losses attributable to the Respondent's failure to abide by the terms of the collective-bargaining agreement, such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

ORDER

The National Labor Relations Board orders that the Respondent, Sorrento Coats, Inc., San Bernardino, California, its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Failing and refusing to bargain with Southwest District Council, Union of Needletrades, Industrial & Textile Employees (UNITE), AFL–CIO, CLC, as the exclusive representative of the employees in the appropriate unit set forth below, and to comply with its collective-bargaining agreement with the Union that automatically renewed and was effective for the one-year period ending on February 28, 1999.

> INCLUDED: All production and maintenance employees, present and future, including, but not necessarily limited to, workers employed as helpers, operators, pressers, sample makers, finishers, drapers, embroiderers, pleaters, shipping and receiving department employees, mechanics, maintenance employees, and general non-supervisory floor help.
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> EXCLUDED: Owners and partners, managers and engineers, and other supervisors who have the actual right to hire and fire, but who do not handle production work as part of their regular work or any other work belonging to the bargaining unit, watchmen and guards.

(b) Failing to make contributions to the ILGWU-Employers Vacation, Health and Welfare Fund on behalf of the unit employees as required by the Respondent's collective-bargaining agreement with the Union.

(c) Refusing to permit the Fund to conduct an audit of the Respondent's records regarding the unit, which audit the Respondent is required to permit under the terms of its collective-bargaining agreement with the Union.

(d) Insisting that the Union agree to settle and withdraw pending unfair labor practice charges against the Respondent as a condition of making the above-mentioned contractually required contributions to the Fund and as a condition of its allowing the Fund to audit its records regarding its payments to the Fund.

(e) Failing and refusing to provide the Union with the information requested by it in about April, July, August 12 and 13, and September 1, 1998, which information is necessary for, and relevant to, its performance of its function as the exclusive representative of the unit.

(f) Unilaterally changing the established practice by which the Union had adequate and meaningful access to

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

the Respondent's facility and to the unit employees so that the Union could perform its function as the exclusive representative of the employees, and denying the Union such access.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the above unit, and comply with the terms and conditions of employment of the collective-bargaining agreement with the Union that automatically renewed and was effective for the 1-year period ending on February 28, 1999.

(b) Make the contributions to the ILGWU-Employers Vacation, Health and Welfare Fund required by the collective-bargaining agreement, and reimburse the Fund for its failure to do so since about March 1997, as set forth in the remedy section of this decision.

(c) Make whole the unit employees, by reimbursing them for any expenses ensuing from its failure to make the required contributions to the Fund, and for any losses attributable to the Respondent's failure to abide by the terms of the collective-bargaining agreement, as set forth in the remedy section of this decision.

(d) Permit the Fund to conduct an audit of the Respondent's records regarding the unit, in accordance with the terms of the collective-bargaining agreement.

(e) Furnish the Union with the names, addresses, telephone numbers, and dates of hire of all unit employees, and with payroll records and other data necessary to determine if the Respondent had lowered piece rates paid to unit employees and to determine whether the Respondent had set piece rates to achieve the yields required by article 24 of the Respondent's collective-bargaining agreement with the Union.

(f) Restore the established practice by which the Union had adequate and meaningful access to the Respondent's facility and to the unit employees so that the Union could perform its representative functions, and provide the Union with such access pursuant to that practice.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in San Bernardino, California, copies of the attached notice marked "Appendix".[2] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1997.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 24, 1999

John C. Truesdale,	Chairman
Sarah M. Fox,	Member
Wilma B. Liebman,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Southwest District Council, Union of Needletrades, Industrial & Textile Employees (UNITE), AFL–CIO, CLC, as the exclusive representative of the employees in the appropriate unit set forth below, and to comply with our collective-bargaining agreement with the Union that automatically renewed and was effective for the 1-year period ending on February 28, 1999.

INCLUDED: All production and maintenance employees, present and future, including, but not necessarily limited to, workers employed as helpers,

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

operators, pressers, sample makers, finishers, drapers, embroiderers, pleaters, shipping and receiving department employees, mechanics, maintenance employees, and general non-supervisory floor help.

EXCLUDED: Owners and partners, managers and engineers, and other supervisors who have the actual right to hire and fire, but who do not handle production work as part of their regular work or any other work belonging to the bargaining unit, watchmen and guards.

WE WILL NOT fail to make contributions to the ILGWU-Employers Vacation, Health and Welfare Fund on behalf of unit employees as required by our collective-bargaining agreement with the Union.

WE WILL NOT refuse to permit the Fund to conduct an audit of our records regarding the unit, which audit we are required to permit under the terms of our collective-bargaining agreement with the Union.

WE WILL NOT insist that the Union agree to settle and withdraw pending unfair labor practice charges against us as a condition of our making the above-mentioned contractually required contributions to the Fund and as a condition of our allowing the Fund to audit our records regarding our payments to the Fund.

WE WILL NOT fail and refuse to provide the Union with the information requested by it in about April, July, August 12 and 13, and September 1, 1998, which information is necessary for, and relevant to, its performance of its function as the exclusive representative of the unit.

WE WILL NOT unilaterally change the established practice by which the Union had adequate and meaningful access to our facility and to the unit employees so that the Union could perform its function as the exclusive representative of the employees, and WE WILL NOT deny the Union such access.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the above unit, and WE WILL comply with the terms and conditions of employment of our collective-bargaining agreement with the Union that automatically renewed and was effective for the 1-year period ending on February 28, 1999.

WE WILL make the contributions to the ILGWU-Employers Vacation, Health and Welfare Fund on behalf of the unit employees as required by our collective-bargaining agreement with the Union, and WE WILL reimburse the Fund for our failure to do so since about March 1997.

WE WILL make whole the unit employees, by reimbursing them for any expenses ensuing from our failure to make the required contributions to the Fund, and for any losses attributable to our failure to abide by the terms of the collective-bargaining agreement, with interest.

WE WILL permit the Fund to conduct an audit of our records regarding the unit, in accordance with the terms of our collective-bargaining agreement with the Union.

WE WILL furnish the Union with the names, addresses, telephone numbers, and dates of hire of all unit employees, and with payroll records and other data necessary to determine if we had lowered piece rates paid to unit employees and to determine whether we had set piece rates to achieve the yields required by article 24 of our collective-bargaining agreement with the Union.

WE WILL restore the established practice by which the Union had adequate and meaningful access to our facility and to the unit employees so that the Union could perform its representative functions, and WE WILL provide the Union with such access pursuant to that practice.

SORRENTO COATS, INC.